

## Standard Department Narrative Form

Department Name: Board of Health

Department Number 511

### Purpose of Department/Mission

**Track, investigate and abate health problems and hazards in Montague.** This includes specific programs and activities designed to control multiple threats: including communicable and chronic diseases; food safety, water safety and potability, insect and other “vector-borne” outbreaks; biological, chemical and radiological hazards; and public health disasters.

**Prepare for and respond to public health emergencies.** A properly staffed and funded Board of Health would be expected to respond quickly and effectively to disease outbreaks and other public health events. Ideally the Board of Health would be properly staffed and funded to produce a department that is capable of responding to increases in the incidence of diseases, natural disasters, and acts of terrorism. The Board of Health SHOULD be capable of coordinating the delivery of drugs, supplies, and provisions to victims and populations at risk in the event of a terrorist attack or a highly pathogenic influenza or other communicable disease. We keep the public informed and serve as the network hub for community hospitals, physicians, and other health care providers.

**We guard and protect against threats:** Investigating disease outbreaks. Inspecting restaurants for food manager knowledge and staff education, including establishment safety and cleanliness. Providing community members with the resources needed to protect and manage their health. Responding swiftly to health threats from natural or biological disasters and terrorist attacks. Managing protection against West Nile virus, SARS, pandemic flu and Lyme disease.

**We provide leadership:** Defending against emerging infections. Assuring that flu vaccines reach people most at risk. The Public Health Nurse promotes health and teaches disease prevention strategies. We advocate for better health through public policy. We empower our residents by providing necessary preventive care and monitoring seniors’ blood pressure among other elder risk factors.

**We share our knowledge:** Teaching people about nutrition and exercise. Cooperating with physicians, emergency personnel and hospitals. Training new professionals. Evaluating programs. Educating communities to help prevent disease.

The Montague Board of Health is as necessary as police, firefighters and emergency medical personnel to respond to emergencies and protect community health and safety.

**The Montague Board of Health is an essential and cost-effective public investment.**

**Aside from the “purpose and mission” of the Board of Health the reality is:**

We respond to hundreds of complaints every year, we draft regulations to protect health and safety, we monitor the installation of on-site septic systems and potable well water installations among a myriad of other, responsibilities. The truth is the mandate of boards of health far outweigh Montague Board of Health’s ability to

address them. This department puts out fires all day, everyday, there is little opportunity to practice real “public health”.

Three part-time elected board members who are paid a monthly stipend

**One full-time Director of Public Health** (35 hours per week)

**One half-time Board of Health Clerk** (17.5 hours per week)

**One Public Health Nurse** (5.0 hours per week)

**One part-time Animal Inspector** who is paid a semi-annual stipend

**Director of Public Health** (35 hours per week)

*Provide for fulfillment of duties (\*M.G.L. c.111 5, 26-33 including enforcement of the state Sanitary and Environmental Codes, reporting diseases dangerous to the public health, and enforcement of other applicable state and local laws and regulations through planning and budgeting.*

**One half-time Board of Health Clerk** (17.5 hours per week)

Provides critical support to Board of Health including money collection, payroll, permit renewal, filing

**One part-time Public Health Nurse** (5.0 hours per week)

*Chapter 111: Section 112*

*Chapter 111: Section 111*

*Chapter 111: Section 181*

**One part-time Burial Agent**

*MGL 114: Section 45. Burial permits; permits for removal of bodies; certificates of death; deceased veterans*

**One part-time Animal Inspector**

*MGL 129 § 15 and 16 requires each municipality to have a state appointed animal inspector.*

*Responsible for quarantining animals and for conducting an annual town wide barn inspection which includes a census of every farm animal in town (that can be located)*

### **Mandated Services:**

Bioterrorism preparedness HSPD-5 (Homeland Security Presidential Directive 5)

Emergency preparedness HSPD-5 (Homeland Security Presidential Directive 5)

Flu pandemic preparedness, including a working plan to administer prophylaxis to all Montague, Gill, Wendell, and Erving Residents within 3 days.

*The town nurse has played a very important role in helping us write our emergency dispensing site plan.*

Communicable disease reporting and surveillance, tracking and reporting infectious disease.

Inspect all food establishments twice a year

Inspect all temporary food booths

Title 5: witness perc tests, soil evaluations, review and approve septic system design plans.

Inspect installation of all new and repaired systems.

Review all title 5 system inspection reports

Housing inspections, enforce the state sanitary code chapter II which is meant to provide safe, adequate housing for all residents of Montague

Substandard housing is a critical problem in Turners Falls and Millers Falls. In addition to ensuring occupant safety and wellbeing enforcement of the housing code is a major mechanism by which property owners are required to repair their property.

Private well drilling permits and potable water quality analysis

Rabies control via quarantining animals

Beaver control

Annual barn inspections

Overflowing and neglected dumpsters  
Working with compulsive hoarders

### **Other Programs/Services Provided**

Administration of flu vaccinations

Blood pressure clinics, diabetes screening including Hemoglobin A1C screening flu clinics, tetanus vaccinations, and many other services other duties:

Since 9/11 and Homeland Security Presidential Directive 5 (HSPD-5) local boards of health have become MANDATED first responders for public health emergencies. This is a tremendous responsibility and the public health nurse is an integral part of the emergency response team.

The Board of Health periodically writes, promulgates and enforces regulations for the protection of public health.

The Board of Health is MANDATED to investigate, verify and abate any nuisance that threatens public health.

Annual dissertations on department responsibilities

### **Revenues Generated:**

Copies

Re-inspection Fees

Letters of Fitness Fees

Perc Test Fees

Tobacco Violation Fees

Trailer Park Licenses

Massage Licenses

Pumping/Hauling Licenses

Bed & Breakfast Licenses

Funeral Director Licenses

Tanning Licenses

Common Trash Hauler Licenses

DWCP Disposal Construction Permits

Well Permits

DWIP Disposal Installation Permits

Mobile Food Unit Permits

Tobacco Permits

Burial Permits

Food Service Permits

Sundries Permits

Residential Kitchen Permits

Retail Food Service Permits

Nurse's reimbursements from insurance company for services

***The Board of Health is required, by law to enforce the following Massachusetts General Laws and Code of Massachusetts Regulations (CMR)***

The 2013 Federal Food Code as well as 105 CMR 590.000 the Massachusetts Food Code

105 CMR 400.00 and 410.00 Minimum Standard of Fitness for Human Habitation, State Sanitary Code.

330 CMR 10.00 Prevention of the spread of rabies

310 CMR 15.000 State Sanitary Code – Septic Systems

105 CMR 123 Tanning Facilities

105 CMR 300 Reportable Diseases

105 CMR 561 Frozen Desserts

105 CMR 430 Recreational Camps for Children

105 CMR 435 Swimming Pools

105 CMR 520 Labeling

M.G.L. c. 111 § 5 PART I. ADMINISTRATION OF THE GOVERNMENT

TITLE XVI. PUBLIC HEALTH

### **Chapter 111: Section 5. Powers and duties of department**

Section 5. The department shall take cognizance of the interests of life, health, comfort and convenience among the citizens of the commonwealth; shall conduct sanitary investigations and investigations as to the causes of disease, and especially of epidemics, and the sale of food and drugs and adulterations thereof; and shall disseminate such information relating thereto as it considers proper. It shall advise the government concerning the location and other sanitary condition of any public institution. It may produce and distribute immunological, diagnostic and therapeutic agents as it may deem advisable, and may sell such portions of such materials produced in its laboratories as constitute an excess over those required for its use within the commonwealth.

### **Chapter 111: Section 29.**

Weekly reports of deaths from diseases dangerous to public health

Section 29. Boards of health shall send to the department every week, upon forms to be prescribed by it, a report of deaths in their towns for the week ending Saturday noon, from all diseases declared by the department to be dangerous to the public health.

### **Chapter 111: Section 30.**

Agents; appointment; inspections

**Section 30.** Boards of health may appoint agents or directors of public health to act for them in cases of emergency or if they cannot conveniently assemble, and any such agent or director shall have all the authority which the board appointing him had; but he shall in each case within two days report his action to the board for its approval, and shall be directly responsible to it and under its direction and control. An agent or director of public health appointed to make sanitary inspections may make complaint of violations of any law, ordinance or by-law relative to the public health.

### **Chapter 111: Section 31.**

Health regulations; summary publication; hearings; filing sanitary codes and related rules, etc.

**Section 31.** Boards of health may make reasonable health regulations. A summary which SHALL describe the substance of any regulation made by a board of health under this chapter SHALL be published once in a newspaper of general circulation in the city or town, and such publication SHALL be notice to all persons. No regulation or amendment thereto which relates to the minimum requirements for subsurface disposal of sanitary sewage as provided by the state environmental code SHALL be adopted until such time as the board of health SHALL hold a public hearing thereon, notice of the time, place and subject matter of which, sufficient for identification, SHALL be given by publishing in a newspaper of general circulation in the city or town once in each of two successive weeks, the first publication to be not less than fourteen days prior to the date set for such hearing, or if there is no such newspaper in such city or town, then by posting notice in a conspicuous place in the city or town hall for a period of not less than fourteen days prior to the date set for such hearing. Prior to the

adoption of any such regulation or amendment which exceeds the minimum requirements for subsurface disposal of sanitary sewage as provided by the state environmental code, a board of health **SHALL** state at said public hearing the local conditions which exist or reasons for exceeding such minimum requirements. Whoever, himself or by his servant or agent, or as the servant or agent of any other person or any firm or corporation, violates any reasonable health regulation, made under authority of this section, for which no penalty by way of fine or imprisonment, or both, is provided by law, **SHALL** be punished by a fine of not more than one thousand dollars.

Boards of health **SHALL** file with the department of environmental protection, attested copies of sanitary codes, and all rules, regulations and standards which have been adopted, and any amendments and additions thereto, for the maintenance of a central register pursuant to section eight of chapter twenty-one A.

#### **Chapter 111: Section 31A.**

Permit for removal or transportation of garbage; application; exemptions Section 31A. No person **SHALL** remove or transport garbage, offal or other offensive substances through the streets of any city or town without first obtaining a permit from the board of health of such city or town; provided, however, that no rules or regulations **SHALL** restrict the hours of the day when garbage, offal or other offensive substances may be collected in areas zoned for business, commercial or industrial use. An application for such permit **SHALL** be in such form and contain such information, on oath, as such board **SHALL** require. All such permits **SHALL** expire at the end of the calendar year in which they are issued, but may be renewed annually on application as herein provided. No permit **SHALL** be transferred except with the approval of the said board.

Notwithstanding the foregoing provisions, any person may, without such a permit, transport garbage, offal or other offensive substances through the streets of a city or town in which said substances were not collected; provided, that he registers with the board of health of such city or town; and, provided further, that he transports said substances in accordance with such reasonable rules and regulations as may be established by such board of health. Motor vehicles owned by the commonwealth or any of its political subdivisions and motor vehicles engaged under contract with the commonwealth in the transportation of garbage or refuse **SHALL** be exempt from the provisions of this section; provided, however, that a city or town may recommend to the department of highways, in writing, an alternative route of travel for such motor vehicles whereby the noise or nuisance incident to such travel **SHALL** be minimized or abated and said department **SHALL** consider such alterations or changes in the travel routes of such motor vehicles as will result in the minimization of such noise or nuisance.

#### **Chapter 111: Section 31B.**

Rules and regulations for removal of garbage; penalty

**Section 31B.** Boards of health **SHALL**, from time to time, make rules and regulations for the control of the removal, transportation or disposal of garbage, offal or other offensive substances. Whoever violates any provision of section thirty-one A, or of any rule or regulation made there under, **SHALL** be punished by a fine of not more than one thousand dollars.

#### **Chapter 111: Section 31C.**

Atmospheric pollution; regulation and control; publication; hearings; penalties; enforcement; jurisdiction; injunction

Section 31C. A board of health, or other legal authority constituted for such purpose by vote of the town or city council **SHALL** have jurisdiction to regulate and control atmospheric pollution, including, but not limited to, the emission of smoke, particulate matter, soot, cinders, ashes, toxic and radioactive substances, fumes, vapors, gases, industrial odors and dusts as may arise within its bounds and which constitutes a nuisance, a danger to the public health, or impair the public comfort and convenience.

Said board of health or other legal authority, subject to the approval of the department of environmental protection, in this section called the department, may from time to time adopt reasonable rules and regulations

for the control of atmospheric pollution. Before the board of health or other legal authority submits such rules and regulations to the department for approval, such board or other legal authority SHALL hold a public hearing thereon, of which notice SHALL be given by publication for one day in each of two successive weeks in a newspaper published in the town, the first publication to be at least fourteen days prior to the date of the hearing, or if no newspaper is published in such town, by posting a copy of such notice in a public place therein. Said rules and regulations, when approved by the department, and after publication in a newspaper published in the town, or, if no newspaper is published in such town, after posting a copy in a public place, SHALL have the force of law.

The department SHALL advise the board or other legal authority in all matters of atmospheric pollution. The department may, upon request of the board of health or other legal authority of a town adversely affected by atmospheric pollution arising in another town, after a hearing to all parties interested, assume joint jurisdiction to regulate or control such cause of atmospheric pollution and may exercise all powers of the local board of health or other legal authority under provisions of the General Laws or any special laws.

Whoever violates any order, rule or regulation promulgated or adopted under the provisions of this section SHALL be punished, for the first offense, by a fine of not less than one thousand no more than five thousand dollars and for a subsequent offense, by a fine of not less than five thousand nor more than ten thousand dollars. For the purpose of this paragraph each day or part thereof of violation of such an order, rule or regulation whether such violation be continuous or intermittent, SHALL be construed as a separate and succeeding offense.

Rules and regulations promulgated or adopted under the provisions of this section SHALL be enforced by said board of health or other legal authority either of which may delegate the power to enforce specific regulations to other agencies or departments of the same city or town. The superior court SHALL have jurisdiction in equity to enforce such rules and regulations and may restrain by injunction any violation thereof.

#### **Chapter 111: Section 31D.**

Privy, cesspool and septic tanks; disposal of contents; investigation of facilities

**Section 31D.** Cities, towns and sewerage districts may, subject to the approval of the department of environmental protection, provide facilities for the receipt and disposal of privy, cesspool and septic tank contents collected for hire by private persons and may establish such charges for the use of such facilities as may be necessary for defraying the cost of construction, operating and maintaining the same.

The commissioner of environmental protection may investigate facilities for the receipt and disposal of privy, cesspool and septic tank contents in cities, towns and sewerage districts. If in his opinion he determines such facilities are inadequate for proper disposal of such contents, he may recommend necessary action for the protection of the public. If after a reasonable time, the city, town or sewerage district fails to act upon his recommendation in a manner satisfactory to him, upon an order issued by the department of environmental protection, a city, town or sewerage district SHALL provide facilities for the receipt and disposal of privy, cesspool and septic tank contents collected for hire by private persons. The city, town or sewerage district may establish such charges for the use of such facilities as may be necessary for defraying the cost of constructing, operating and maintaining the same.

Nothing in this section SHALL prevent a city, town or sewerage district, or a combination of cities and towns or cities, towns and a sewerage district from acting jointly in carrying out the provisions of this section.

#### **Chapter 111: Section 31E.**

Individual sewage disposal systems; action on applications

**Section 31E.** Any health officer or board of health for any city, town or district, whose authority includes the issuance of permits for construction, maintenance or alteration of individual sewage disposal systems for residential buildings of not more than four dwelling units, SHALL act upon a completed application for such permit to construct, maintain, or alter such system within forty-five days from the date upon which such

completed application is filed with said health officer or board of health. If a determination on a completed application is not rendered within forty-five days by the appropriate health officer or board of health, then said permit SHALL be deemed to have been granted.

For the purpose of this section, a completed application SHALL include, but not be limited to, information satisfactory to any local board of health regarding the number of deep observation holes, all percolation test results and a plan which meets the requirements of the state sanitary code and any local health regulation. Such application SHALL be considered filed on the date upon which a completed application is presented by the person who is seeking the permit, to the health officer, board of health or agent thereof.

For the purpose of this section, "action on a completed application" SHALL mean approval of said application and issuance of the permit to construct, maintain, or alter, or disapproval of said application with a written statement of the reasons for such disapproval. The written statement of reasons, in the case of disapproval SHALL be sent to the applicant by first class mail, postage prepaid and SHALL include the information necessary in order to ascertain why the application or the proposed subsurface sewage disposal system or both fail to comply with local or state code requirements.

Nothing contained in this section SHALL be deemed to exempt the applicant from the regulations promulgated under the provisions of section thirteen of chapter twenty-one A.

## **DANGEROUS DISEASES**

### **Chapter 111: Section 111.**

Notice to board of health that persons infected with dangerous diseases; application of section

**Section 111.** If a physician knows or has cause to believe that a person whom he visits is infected with a disease dangerous to the public health, or if either eye of an infant whom or whose mother a physician, or a hospital medical officer registered under section nine of chapter one hundred and twelve, visits, becomes inflamed, swollen and red, or shows an unnatural discharge within two weeks after birth, he SHALL immediately give written notice thereof, signed by him, to the board of health of the town where the patient is being attended by him. If the board of health which receives such written notice is the board of health of a town other than that wherein the patient dwells, it SHALL, immediately upon receipt of such notice, send a copy thereof to the board of health of the town wherein the patient dwells; and, in addition thereto, the board of health which receives such written notice, whether or not it is the board of health of the town wherein the patient dwells, SHALL send a copy thereof to the board of health of the town in which the patient is known to have contracted such disease and to the board of health of each town in which he is known to have exposed any person to such disease. If a physician or such a hospital medical officer refuses or neglects to give the notice required by this section he SHALL be punished by a fine of not less than fifty nor more than two hundred dollars.

The foregoing provisions of this section SHALL not apply to tuberculosis, nor SHALL the foregoing provisions of this section and the provisions of section one hundred and nine apply to venereal diseases as defined under section six, except in the case of eye infections in infants under two weeks of age. Any person having tuberculosis or a venereal disease SHALL be reported to local boards of health either directly or through the department in accordance with such special rules and regulations as the department may make, having due regard for the best interests of the public.

## **DANGEROUS DISEASES**

### **Chapter 111: Section 112. Notice by local board to department**

**Section 112.** If the board of health of a town has had notice of a case of any disease declared by the department dangerous to the public health therein, it SHALL within twenty-four hours thereafter give notice thereof to the department, stating the name and the location of the patient so afflicted, and upon request the department SHALL forthwith certify any such reports to the department of public welfare.

## **DANGEROUS DISEASES**

### **Chapter 111: Section 113.**

Records of reports of dangerous diseases; notice

**Section 113.** Every board of health SHALL keep a record of all reports received pursuant to sections one hundred and nine to one hundred and eleven, inclusive, containing the name and location of all persons who are infected, their disease, the name of the person reporting the case, the date of such report, and other information required by the department. Such records SHALL be kept in the manner or upon forms prescribed by the department. The board of health SHALL forthwith give information to the school committee of all diseases dangerous to the public health so reported to it. Every board of health SHALL appoint some person, who may or may not be a member of the board, who SHALL give notice to the department, as provided in the preceding section, of any person infected with a disease dangerous to the public health; and in case of the absence or disability of such appointee, the board of health SHALL appoint another person to perform this duty during such absence or disability. Such appointments and the acceptance thereof by the persons so appointed SHALL be placed upon the records of the board. Any person, having accepted such appointment, who willfully refuses or willfully neglects or through gross negligence fails to give such notices SHALL be punished by a fine of not more than fifty dollars.

## **NUISANCES**

### **Chapter 111: Section 122. Regulations relative to nuisances; examinations**

**Section 122.** The board of health SHALL examine into all nuisances, sources of filth and causes of sickness within its town, or on board of vessels within the harbor of such town, which may, in its opinion, be injurious to the public health, SHALL destroy, remove or prevent the same as the case may require, and SHALL make regulations for the public health and safety relative thereto and to articles capable of containing or conveying infection or contagion or of creating sickness brought into or conveyed from the town or into or from any vessel. Whoever violates any such regulation SHALL forfeit not more than one thousand dollars.

## **NUISANCES**

### **Chapter 111: Section 122A. Regulation of domestic water supply; powers of board of health; penalties**

**Section 122A.** Upon determination by the board of health that the available supply of water for drinking, culinary and other domestic purposes in any place of habitation, or in any place where food or drink is prepared, handled or served to the public, is so unsafe or inadequate as to constitute a nuisance within the meaning of this chapter, said board may issue a written order to the owner of such place, as appearing in the current records of the assessors, requiring him to discontinue the use of the water supply, or, at his option, to provide such place with a water supply safe and adequate for such purposes. Any person who willfully fails or refuses to comply with such an order SHALL be punished by a fine of not less than fifty dollars, and the board may thereupon cause the removal of the occupants of the place to which the order relates, which SHALL not again be occupied as a place of habitation or place in which food or drink is prepared, handled or served to the public, without its written permission. The superior court, on a petition in equity brought by said board, SHALL have jurisdiction by injunction or otherwise to enforce any order issued under this section.

### **Chapter 111: Section 123.**

#### **Abatement by owner; penalty**

**Section 123.** Said board SHALL order the owner or occupant of any private premises, at his own expense, to remove any nuisance, source of filth or cause of sickness found thereon within twenty-four hours, or within such other time as it considers reasonable, after notice; and an owner or occupant SHALL forfeit not more than one thousand dollars for every day during which he knowingly violates such order.



**Chapter 111: Section 124. Service of order for abatement**

**Section 124.** Such order SHALL be in writing, and may be served personally on the owner, occupant or his authorized agent by any person authorized to serve civil process; or a copy of the order may be left at the last and usual place of abode of the owner, occupant or agent, if he is known and within or without the commonwealth; or a copy of the order may be sent to the owner, occupant or agent by registered mail, return receipt requested, if he is known and within the commonwealth. If the order is directed against the owner and if the residence and whereabouts of the owner or his agent are unknown or without the commonwealth, the board may direct the order to be served by posting a copy thereof in a conspicuous place on the premises and by advertising it for at least three out of five consecutive days in one or more newspapers of general circulation within the municipality wherein the building affected is situated.

**Chapter 111: Section 125A.****Review of order adjudging the operation of a farm to be a nuisance****Section 125A.**

If, in the opinion of the board of health, a farm or the operation thereof constitutes a nuisance, any action taken by said board to abate or cause to be abated said nuisance under sections one hundred and twenty-two, one hundred and twenty-three and one hundred and twenty-five SHALL, notwithstanding any provisions thereof to the contrary, be subject to the provisions of this section; provided, however, that the odor from the normal maintenance of livestock or the spreading of manure upon agricultural and horticultural or farming lands, or noise from livestock or farm equipment used in normal, generally acceptable farming procedures or from plowing or cultivation operations upon agricultural and horticultural or farming lands SHALL not be deemed to constitute a nuisance.

**NUISANCES****Chapter 111: Section 127A.**

State sanitary code; adoption; enforcement; jurisdiction; speedy trial

**Section 127A.** Said department SHALL adopt, and may from time to time amend, public health regulations to be known as the state sanitary code, which may provide penalties for violations thereof not exceeding five hundred dollars for any one offence or not more than twenty-five thousand dollars or up to two years in a house of correction for violations involving the improper disposal of infectious or physically dangerous medical or biological waste. Said code SHALL become effective and have the force of law upon filing with the state secretary or at such later date as may be specified by the department. The code SHALL deal with matters affecting the health and well-being of the public in the commonwealth in subjects over which the department takes cognizance and responsibility, including, but not limited to, standards of fitness for human habitation, housing and sanitation standards for farm labor camps, standards for recreational camps for children, standards for swimming pools, bathing beaches, family type camp grounds, and sanitation standards for food service establishments; provided, however, that single-purpose classes, workshops, clinics or programs sponsored by municipal recreation departments, or neighborhood playgrounds designed to serve primary play interests and needs of children, as well as affording limited recreation opportunities for all people of a residential neighborhood, whether supervised or unsupervised, located on municipal or non-municipal property, whether registration is required or participation is on a drop-in basis, SHALL not be deemed to be recreational camps for children. Nothing contained in the code SHALL be in conflict with any general or special law. This section SHALL not be deemed to limit the right of any board of health to adopt such rules and regulations as, in its opinion, may be necessary for the particular locality under its jurisdiction; provided, such rules and regulations do not conflict with the laws of the commonwealth or the provisions of the code. Said code may provide for the

demolition, removal, repair or cleaning by local boards of health and, in the cities of Boston, Worcester and Cambridge, by the commissioner of housing inspection, of any structure which so fails to comply with the standards of fitness for human habitation or other regulations in said code, as to endanger or materially impair the health or well-being of the public. Said code or a supplement thereto SHALL designate those conditions which, when found to exist upon inspection of residential premises, SHALL be deemed to endanger or materially impair the health or safety of persons occupying the premises. This designation SHALL not be construed as prohibiting an inspector or other authorized person from certifying that any other violation or combination or series of violations of said code or other applicable laws, ordinances, by-laws, rules or regulations may endanger or materially impair the health or safety of said persons when such certification is otherwise appropriate.

Local boards of health SHALL enforce said code in the same manner in which local health rules and regulations are enforced, but, if any such local boards fail after the lapse of a reasonable length of time to enforce the same, the department may in like manner enforce said code against any violator. The superior court SHALL have jurisdiction in equity to enforce the provisions of said code and any actions brought to enforce said provisions SHALL be advanced for speedy trial.

#### **Section 127B**

Dwellings unfit for human habitation; order to vacate or to abate nuisance; removal of occupants; demolition expense, lien; inspection reports; code violations; notices; enforcement proceedings, jurisdiction; appeal

**Section 127B.** Upon a determination by the board of health, or, in the cities of Boston, Worcester and Cambridge, by the commissioner of housing inspection, after examination as provided in said code, that a building, tenement, room, cellar, mobile dwelling place or any other structure (a) is unfit for human habitation, (b) is or may become a nuisance, or (c) is or may be a cause of sickness or home accident to the occupants or to the public, it may issue a written order to the owner or occupant or any of them thereof, requiring the owner or occupant to vacate, to put the premises in a clean condition, or to comply with the regulations set forth in said code which are not being complied with or to comply with the rules and regulations adopted by the board of health as being necessary for the particular locality. The order SHALL be served in the same manner as is provided for the service of an order by section one hundred and twenty-four. A copy of such order SHALL be served upon any mortgagee or lien of record by sending the same by registered mail, return receipt requested. If the owner or occupant refuses to comply with such order, the board of health may cause the premises to be properly cleaned at the expense of the owner or occupant, remove the occupant forcibly and close up the premises, or it may issue a written notice to the owner of such building, as appearing in the current records of the assessors of such town, setting forth the particulars of such unfitness and requiring that the conditions be remedied. If the person so notified fails within a reasonable time to remedy the conditions thus set forth, the superior court on a petition in equity brought by the board of health, SHALL have jurisdiction, to enforce the requirements of the board of health, by appointment of a receiver in accordance with the provisions of section one hundred and twenty-seven I, or by providing other equitable or legal relief. A copy of such written notice SHALL be served upon any mortgagee or lien of record, by sending the same by registered mail, return receipt requested. No occupant of any residential premises may be removed, nor any order to vacate issued to any such occupant, unless the board of health has previously issued a written finding that the premises are unfit for human habitation. The board SHALL enter in said finding the material facts upon which such finding is based. No such finding SHALL be made before said occupants have been given written notice and an opportunity for a public hearing to be held not less than five days after receipt of such notice, unless the board of health determines in writing that the danger to the life or health of the occupants is so immediate that no delay may be permitted. In all other cases in which the board of health determines that residential premises are not unfit for human habitation but that conditions within such premises in violation of said code or rules and regulations may not be remedied unless the occupants are removed therefore, it may bring an action to remove the occupants

from the premises pursuant to chapter two hundred and thirty-nine. In any such action, the court SHALL consider the matter according to the procedures and standards otherwise set forth in said chapter, and may grant a stay or stays of execution when appropriate. Premises closed up under the provisions of this section SHALL not be occupied as a human habitation without written permission of the board of health. If compliance with the regulations contained in said code has not been effected within one year from the date the premises have been so closed up the board of health may cause such structure to be demolished or removed; provided, however, that said board, upon written certification to it by the head of the local health department that immediate demolition or removal is essential to protect the health and safety of the public, may cause such demolition or removal within ninety days of said closing. A claim for the expense incurred by said board in cleaning the premises or in causing such structure to be demolished or removed SHALL constitute a debt due the city or town upon the completion of the work and the rendering of an account therefore to the owner of such structure, and SHALL be recoverable from such owner in an action of contract.

The provisions of the second paragraph of section three A of chapter one hundred and thirty-nine relative to liens for such debt and the collection of the claims for such debt, SHALL apply to any debt referred to in this section, except that the board of health, or, in the cities of Boston, Worcester and Cambridge, the commissioner of housing inspection, SHALL act hereunder in place of the mayor or board of selectmen.

Local boards of health SHALL enforce said code in the same manner in which local health rules and regulations are enforced but if any such local board fails after the lapse of a reasonable length of time to enforce the same, the department may in like manner enforce said code against any violator.

The superior court, housing court, and district court SHALL have jurisdiction in equity to enforce the provisions of said code.

A board of health and, in the cities of Boston, Worcester and Cambridge the commissioner of housing inspection or local code enforcement agency may file a petition under section one hundred and twenty-seven H. A copy of the report of any investigation or inspection of residential premises for violations of the code or other applicable laws, ordinances, by-laws, rules or regulations, and of any written order or notice issued by the board, SHALL be delivered personally or sent by first class mail to the occupants of all affected premises within seven days after the investigation or inspection of the premises or the issuance of the order or notice. A notice of the date, time and place of any administrative or court hearings scheduled by or known to the board relating to violations, including all referrals of violations to other government agencies, SHALL also be delivered or sent to the occupants. All investigation or inspection reports SHALL include the name of the inspector, and the date and time of the inspection or investigation; the date and time of any scheduled follow-up inspection; a description of the conditions constituting the violations, if any; a listing of the specific provisions of the code or other applicable laws, ordinances, by-laws, rules or regulations that appear to be violated; a determination by the official inspecting the premises whether each violation, or the cumulative effect of all violations, may endanger or materially impair the health, safety or well-being of any occupant or the public; a determination by said official whether any violations appeared to be substantially caused by the occupant or any person acting under his control; and a brief summary of the statutory remedies available to occupants of the affected premises. All reports, orders or notices relating to such inspections, investigations, or violations SHALL be public records, and SHALL be kept on file by the originating agency according to law.

Any person aggrieved by the failure of any inspectors or other personnel of the board or other code enforcement agency to inspect upon request any premises that the board or agency may lawfully inspect, or to find violations of law where such violations are claimed to exist, or to certify that such violations may endanger or materially impair the health, safety or well-being of the occupants, may appeal such failure to act to the full board or to the head of the agency. Such appeal SHALL be given a speedy hearing before said board or an impartial officer of said agency.

## **NUISANCES**

Chapter 111: Section 127C. Petition for violation of sanitary code; requisites

Section 127C. If the condition of any building or any part thereof used for residential purposes is in violation of the standards of fitness for human habitation established under the state sanitary code, as provided by section one hundred and twenty-seven A, or in violation of any board of health standards, a petition may be filed by any affected tenant or by the board of health, or, in the cities of Boston, Worcester and Cambridge, by the commissioner of housing inspection, in a district court, housing court, or superior court. The petition SHALL state that the premises have been inspected by the board of health or other appropriate inspection agency and that the condition of said premises has been found to be in violation of the state sanitary code; that such condition may endanger or materially impair the health or well-being of any tenant therein; and that said condition was not substantially caused by the tenant or any other person acting under his control.

An affected tenant may also file a petition in such court without stating that such premises have been found by an appropriate inspection agency to be in violation of any such standards, provided that he states (a) facts sufficient to demonstrate a likely violation of the state sanitary code which may endanger or materially impair the health or well-being of any tenant in the building or premises occupied by such tenant, (b) that the conditions in question were not substantially caused by such tenant or any person acting under his control and (c) that a request for inspection of such premises was made to the appropriate inspecting agency at least twenty-four hours prior to the filing of the petition and that there has been no inspection.

**Chapter 111: Section 128A.** Filling of sites of demolished or removed buildings

**Section 128A.** The board of health may adopt and, from time to time, revise regulations requiring that the site of a demolished or removed building or structure be leveled to uniform grade by a sanitary fill proper to prevent rodent harborage and other unsanitary conditions.

**Chapter 111: Section 131.** Compulsory examination of premises; complaint; warrant **Section 131.** If the board considers it necessary for preservation of life or health to enter any land, building or premises, or go on board a vessel within its town, to examine into and destroy, remove or prevent a nuisance, source of filth or cause of sickness, and the board, or any agent thereof sent for that purpose, is refused such entry, any member of the board or such agent may make complaint to a justice of any court of record or to a magistrate authorized to issue warrants, who may thereupon issue a warrant, directed to the sheriff or any of his deputies, to such member or agent of the board, or to any constable of such town, commanding him to take sufficient aid and at any reasonable time repair to the place where such nuisance, source of filth or cause of sickness complained of may be, and to destroy, remove or prevent the same, under the direction of the board.

## **NOISOME TRADES**

**Chapter 111: Section 143.** Trade or employment attended with noisome and injurious odors; assignment of places; prohibition; appeal

**Section 143.** No trade or employment which may result in a nuisance or be harmful to the inhabitants, injurious to their estates, dangerous to the public health, or may be attended by noisome and injurious odors SHALL be established in a city or town except in such a location as may be assigned by the board of health thereof after a public hearing has been held thereon, subject to the provisions of chapter forty A and such board of health may prohibit the exercise thereof within the limits of the city or town or in places not so assigned, in any event. Such assignments SHALL be entered in the records of the city or town, and may be revoked when the board SHALL think proper.

The department of environmental protection SHALL advise, upon request, the board of health of a city or town previous to the assignment of places for the exercise of any trade or employment referred to in this section, and

any person, including persons in control of any public land, aggrieved by the action of the board of health in assigning certain places for the exercise of any trade or employment referred to in this section may, within sixty days, appeal from the assignment of the board of health to the department and said department may, after a hearing rescind, modify or amend such assignment.

Notwithstanding any provision in section one hundred and twenty-five A of this chapter, this section SHALL apply to the operations of piggeries.

## **CHAPTER 111. PUBLIC HEALTH VACCINATION**

*Try affecting this without a Qualified Public Health Nurse on Staff.*

**Chapter 111: Section 181.** Enforcement of vaccination of inhabitants of towns

**Section 181.** Boards of health, if in their opinion it is necessary for public health or safety, SHALL require and enforce the vaccination and revaccination of all the inhabitants of their towns, and SHALL provide them with the means of free vaccination. Whoever refuses or neglects to comply with such requirement SHALL forfeit five dollars.

**Chapter 111: Section 125.** Removal of nuisance by board

**Section 125.** If the owner or occupant fails to comply with such order, the board may cause the nuisance, source of filth or cause of sickness to be removed, and all expenses incurred thereby SHALL constitute a debt due the city or town upon the completion of the removal and the rendering of an account therefore to the owner, his authorized agent, or the occupant, and SHALL be recoverable from such owner or occupant in an action of contract.

The provisions of the second paragraph of section three A of chapter one hundred and thirty-nine, relative to liens for such debt and the collection of the claims for such debt, SHALL apply to any debt referred to in this section, except that the board of health SHALL act hereunder in place of the mayor or board of selectmen.

## **LEGAL AUTHORITY AND PROCEDURES SOURCES AND SCOPE OF LEGAL AUTHORITY**

**In the area of public health**, there are three primary repositories of authority: the **federal government, the state government, and local authorities**. Examination of the constitutional basis of power at each level of government helps one understand the role of local official health agencies. The Federal Government: The powers of the federal government are limited to those functions

explicitly delegated by the Constitution. All other powers are reserved for the states or the people. Although powers delegated to the federal government are limited, and although health and safety matters have traditionally been considered matters properly regulated by state and local governments, federal regulatory action derived from the powers to regulate interstate commerce and to levy taxes for the general welfare has considerable impact on state and local health programs and enforcement.

The State Government: In contrast to the defined powers of the federal government, state governments have broad powers. These include “powers to prescribe, within the limits of the state and federal constitutions, reasonable regulations necessary to preserve the public health, safety, and welfare.” These powers are commonly referred to as “police powers” and are derived from the nature of state government. While there is no specific definition of the states’ police powers, the courts have historically found two basic purposes that justify a state’s actions with regard to the public health: actions for the protection of a given individual; and actions for the protection of society at large.

**It is a widely accepted function of government to protect the health of society, even at the expense of the individual’s freedom.**

Although the state government is the primary repository of authority in public health matters, there are constraints on this authority. In some cases, these may be explicit powers granted to the federal government, or prohibited to the states by the federal constitution or federal laws. In other cases, individual rights of citizens, as they are expressly enumerated in the federal and state constitutions, may take precedence over the state's authority. In public health, policies such as requiring adequate sewage systems and performing inspections of private dwellings depend on a balance between the individual's right to privacy and the governing agency's overall concern with the health of the individual involved and society at large.

State governments are clearly the primary authority in the field of public health and possess the power to make laws for the public health. This power consists, in part, of being able to delegate authority. It is from this power that state agencies and local boards of health derive most of their authority. State agencies derive virtually all of their powers from laws enacted by the state legislature and approved by the Governor. Local governments also derive most (but not all) of their authority from such state laws.

**Local Authorities:** Local public health departments and agencies derive their authority primarily through explicit and specific delegation of power from the state legislature. This authority includes both the powers that are expressly granted by state statutes and those powers that are necessarily implied from those statutes. In delegating power, the state legislature places limits on the exercise of that power. In this way the state specifies the manner in which the power is to be exercised, the consequences of failure to exercise it, and the consequences of improper exercise of that power.

**Failure of a board of health to enforce the Sanitary Code or the Environmental Code may result in the state re-assuming its power to enforce state laws and regulations.**